

## DECISION MAKING BY CONSENSUS IN INTERNATIONAL ORGANIZATIONS AS A FORM OF NEGOTIATION

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The modes of decision-making in international organizations have been widely discussed over the years. Unanimity, the veto procedure, weighted voting, majority principle and consensus are among those modes of decision making that have been adopted by international organizations all over the world. Unanimity rule had been accepted by the League of Nations and become the cause for decision making crisis after WWI. Weighted voting is accepted by World largest financial institutions as the World Bank and IMF due to the differences in contributions made among developed and developing countries. UN General Assembly calls for two-third majority for specific important decisions, and simple majority of the participating and voting members for other decisions.

Consensus decision making as a mode of procedure became popular in 1970s as a result of growing number of independent states taking an active part in international politics. According to the Yearbook of International Organizations, the number of independent states as members of the UN had risen from 51 in 1945 to 192 in 2006 as a result of decolonisation and the collapse of the Soviet block. At the same time, the number of intergovernmental and non-governmental organizations has been drastically increased as well<sup>1</sup>. This large number of participants have been openly welcomed to take part in those organizations to oppose a bilateralism, that used to empower potentially influential states over the weak in 30s, and to encourage an “international governance of many” [6, p. 295] or multilateralism that linked with the principle of “the sovereign equality of states” [6, p. 295]. The main idea of this principle is to provide an equal representation and voting power for all participating states in international organizations by taking decisions by consensus. Moreover, as Kaufmann states, there was a strong increase in the number of international conferences where cultural, economic and

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<sup>1</sup>According to the Yearbook, the number of Intergovernmental and non-governmental organizations increased from 213 in 1909 to 7516 in 2004. *Yearbook for International Organizations: Guide to Global Civil Society Networks*, 2000/2001 and 2004/2005, edited by the Union of International Associations (K. G. Saur, Munich) [1, p. 152].

social questions are dominating in agenda in compare with the period before the WWII [7, p. 10]. Moreover, Charney, in his article in the American Journal of International Law argues:

The consensus system assures that decision-making as a multilateral negotiation of a convention will not be dominated by the numerical superiority of any group of nations. Rather, procedural significance will be given to the variations in the power of nations. Since it is difficult to obtain acceptance of voting systems that overtly recognize the differences in nations' importance, the consensus approach permits the maintenance of an egalitarian procedure which in practice may assure that multilateral negotiations reflect the real geopolitical power of the participating nations [2, p.327]

This principle has been adopted by the Association of South East Asian Nations, Executive Committee of IMF, GATT and WTO, NATO, OSCE and various specialized agencies of UN.

However, the purpose of this essay is to examine the consensus decision-making and to prove that it is a negotiation by another name. In other words, the essay is going to illustrate that consensus decision can be achieved only by negotiation. Thus, after an extensive literature review over the main definitions and functions of consensus decision-making and negotiation, the essay will discuss the consensus making in multilateral organizations and its features - straw polls, silence procedure and the chairman power. The main idea of the essay will be supported by discussing decision-making procedure in NATO, Third United Nations Conference on the Law of the Sea (UNCLOS III) conference, General Agreement on Tariffs and Trade Uruguay Round Conference (GATT), CSCE Madrid Meeting and IMF Executive Board, which will provide a better understanding over this issue.

Consensus decision-making has been variously defined by scholars and practitioners in the field. Geoff Berridge has defined consensus decision making as "an attempt to achieve an agreement of all the participants in a multilateral conference without the need for a vote and its inevitable divisiveness." [1, p. 24] In other words, it is an agreement of all taken unanimously by means other than voting. Kahler states that "the effort to achieve consensus ... protects the interests of those who risk becoming permanent minorities at each institution" [5, p. 24]. According to the rules of procedure of the Helsinki process consensus is "the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question" [8, p. 10]. United Nations Convention of the Law of the Sea defines consensus as "the absence of any formal objection" [11]. However, despite numerous definitions and characterization of consensus decision-making, the definition given by Evensen is

most suitable for the purposes of this essay. He states that “consensus is a state of art emerging from negotiations” [12, p. 78].

Nevertheless, how consensus decision making is negotiation? To have a clear idea on this matter we should first understand the meaning of negotiation in a broad sense. According to Kaufmann, negotiations are “the sum total of all talks and contacts intended to work in a cohesive spirit towards one or more objectives of the conference ... to solve disputes or conflicts existing prior to the conference, or arising during the session” [7, p. 9]. He further claims that even a debate over specific statement is negotiation as well, which includes all contacts among members over that issue. Certainly through persuasion, concessions and risk to be isolated consensus decision making works, which means negotiation. Berridge pointed out that “if the reluctant agreement of all participants to be obtained, those most in favour of a proposal must either water it down, make concessions to the unenthusiastic in some other area, or alarm them with the prospect of isolation” [1, 169]. Although debates are taking place among participants, consensus decision making is upheld by modus operandi of meetings, “straw votes,” “silence procedure,” and chairman power which will be further discussed.

However, according to Sizoo and Jurrjens, delegations at the CSCE clearly realise that all decision can be adopted only by consensus, which means no party expresses its objection. They also recognize that to get an approval for the specific issue there is a need for concessions [9, p.61]. In other words, they can't get an acceptance of proposal without an agreement to accept others' proposals or cooperate. As authors mentioned, while small countries consider consensus as a way to affect decisions equally with large and powerful states, the latter ones enable to state, “I shall not accept your proposal unless you accept mine” [9, p. 59]. Thus, to achieve consensus, parties need to negotiate, make concessions and bargain over proposals.

Differences in opinions distinguish the General Agreement on Tariffs and Trade (GATT) Uruguay Round from those seven GATT conferences that took place in the past. According to Feij, decision making at the GATT was based on the Article XXV:1 which states that parties are empowered to act jointly “with a view to ... furthering the objectives of the General Agreement” [3, p. 94], and on the Article XXVIII which states that “negotiations on a reciprocal and mutually advantageous basis ... are of great importance to the expansion of international trade” [3, p. 94]. However, both articles does not specify the method of making a decision specifically, as another article, XXV:4 does. It specifically underlines the majority vote as a decision making rule. Nevertheless, this rule was replaced over the years by consensus [3, p. 94].

Starting from November 1981, when preparation for Uruguay Round was officially launched, large discussions taken place over two controversial subjects, “whether trade in services and other new subjects should be included in a negotiating programme,” [3, p. 96] and on agricultural products, that were discussed and postponed during the previous, Tokyo Round in 1979. Only in 1986 did the Preparatory Committee meet to discuss all proposals and objections for new multilateral trade negotiations and agreed on the venue, in Punta del Este, Uruguay, in September 1986, without any progress in main issues mentioned above. Several formal and informal groups were created to discuss and recommend new proposals but failed to reach a consensus as well. However, the consensus was reached during Uruguay Round Negotiations when 61 members decided to separate those two controversial issues. Feij pointed out that the first part “contains a decision on Negotiations on Trade in Goods taken by the ‘CONTRACTING PARTIES meeting at Ministerial level’ whilst Part II states that ‘Ministers also decided, as part of the Multilateral Trade Negotiations, to launch negotiations on trade and services’” [3, p. 106]. Compromise was achieved in agricultural issues as well during the last day of a meeting. The Uruguay Round shows that consensus even over controversial issues may be achieved only by negotiations; that the latter is a core of any consensus in multilateral meetings.

The other multilateral meeting of particular interest to be discussed is the Third United Nations Conference on the Law of the Sea (UNCLOS III). While analysing decision making at UNCLOS, Buzan underlined two types of consensus, passive and active. The first one brought the conference to the deadlock in 1975. He argued that while discussing a proposal, delegations would “hold out as long as possible in the hope that the other side will concede first” [2, p. 333]. He further states that the idea of a passive consensus rule is “trusting in the generally high desire for a successful outcome to provide momentum towards compromise ... which was a continuation of the procedure used in the Sea – bed Committee during the previous 6 years” [2, p. 332]. As a result the conference reached a crisis. However, during the Third Conference on the Law of the Sea, its Chairman propose an idea of active consensus rule which means that delegates were entitled the right to agree as well as disagree with discussing issues. As almost all delegations needed the Convention and recognize that there should be some procedural innovations to circumvent from failure, they adopt the Chairman proposal unanimously, and that become a dominated procedure during next sessions [2, p. 334].

Nevertheless, it should be mentioned, that major points of this Conference are so-called “Gentleman’s Agreement” and four rules that made the consensus possible. According to Buzan, the Gentleman’s Agreement underlines that “the

Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted” [2, p. 331]. Four rules that attached to the procedural document characterize voting rights, “required majorities, and a variety of procedures by which voting may be deferred in order to ensure that all efforts at reaching consensus have been exhausted” [2, p. 331].

However, the issues discussed at the Conference have been of high interest of all participating states. The author claims that “the sensitivity of the political balance underlying UNCLOS was sufficiently great that a successful outcome of the negotiations could only be achieved by the use of consensus procedure throughout” [2, p. 332]. In other words, it was impossible to achieve any results by voting, as some important interests would be neglected. Thus, the need for negotiation as the only way to achieve a consensus was encouraged by all participating states.

The most important development during UNCLOS Conference was establishment and collaboration of several groups set according to common characteristics and interests. The list includes traditional regional groups, the African, Arab, Asian, Latin American, Eastern and Western European as well as the most influential group, G77<sup>1</sup>. Moreover, the emergence of groups with common interest as Coastal State, Group of Five Archipelagic States, Straits States Group, Oceania Group and Group of 12 that includes Australia, Austria, Canada, Denmark, Finland, Iceland, New Zealand, Norway, Sweden, Switzerland and Netherlands shows the high level of interests and intensity of negotiations at different levels which shape the final consensus achieved. Furthermore, besides mentioned regional groups and groups by interest, distinctiveness of UNCLOS Conference is illustrated in its unofficial negotiation process organized by private initiative when groups of Legal experts called Evensen Group and Castaneda Group emerged. According to Evensen, the procedure of adopting proposals were as following:

1. Chairman of the Group prepare an initial proposal to be discussed.
2. He afterwards followed the discussions carefully, making notes on basic observations and suggestions.
3. Based on observations and notes, the Chairman submitted a compromise proposal, which is subject to discussions again.
4. This procedure continues so far as final consensus is reached [12].

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<sup>1</sup>The Group of 77 of the Conference of the Law of the Sea is differ from the Group of 77 of the UN General Assembly with its own official and working methods.

The role of Evensen group was clearly discussed by Koh and Jayakumar in that the group has changed the tradition of paying attention to specific interest groups into detailed discussion with all delegates over different proposals. At the same time the group became known by its organized nature and frequent meetings even between sessions [13].

The need to achieve compromise was of the great importance during the Madrid Conference on Security and Cooperation in Europe from 1980 to 1983, when East – West relations were struggled over the procedure as an issue at the Conference. Another reason that distinguishes this conference from other numerous events is that informal meetings, coffee breaks and corridor debates had an important impact on the outcome of the conference. It should be mentioned here, that consensus decision-making is adopted as a rule of procedure in the CSCE so that each country has a veto power. Nevertheless, “rules of procedure are normally susceptible to more than one interpretation and it is therefore generally not difficult to make use of them for political ends” [10, p. 278]. According to Sizoo and Jurrjens, three important debates have taken place that signalled the tension between West and East. First, representatives from Eastern block countries were unwilling to negotiate over the agenda prepared by Western delegates to promote their own one. To enforce East delegation to act, Western delegates decided to stop the clock at the end of the day before the opening ceremony next day. During that evening numerous unofficial consultations taken place in corridors of the building when finally a compromise was reached [10]. During the meeting in February 1982, there was a huge debate over the speakers’ list, which supposed to be managed by the Chairman. According to the rules of procedure of CSCE each member country exercises its Chairmanship on alphabetical order by daily rotation. This time, Polish delegate stands the Chairmanship and announced that “only speakers who had given their names ... during the Christmas recess (these happened to be exclusively from WP delegations with Poland itself first in the list) ... would be given the floor” [10, p. 283]. Western Delegation retorted to this announcement bringing another rule from “Blue Book”. The cause of such an announcement was that Western countries were going to discuss repressions in Poland after tragic events in this country in the beginning of 1982. Only after numerous informal debates, coffee breaks, did they come to consensus and closed the session adopting unanimously the mixed list of speakers [10]. And third, in 5<sup>th</sup> March 1982, the procedural debates continued to adopt a working program for the following week, signing a concluding Document which included “the refraining from treats of violence, the furthering of international human contacts, the

free exchange of information and greater freedom of journalists” [10, p. 289]. Initially, the West delegation was not supposed to sign a draft of concluding Document claiming that those rights are currently violated in Poland. Eastern countries on behalf of GDR (German Democratic Republic) proposed to discuss previous week working programme. As a result, Western countries decided to remain silent which lasted for more than 50 hours with numerous unsuccessful coffee breaks and out-of-hall negotiations. According to the authors, debates among delegates continued even in hotel corridors. Finally, after 54 hours of negotiations they reached a consensus. The main points were that: it was agreed to have a working programme for one week which would include some meetings of the Drafting group as proposed by GDR, but at the end of the week the Madrid meeting would go into recess until beginning of November, which fulfil the wishes of Western countries [10, p. 293].

The example of Madrid Conference clearly illustrates the advantages of consensus, particularly in deadlock situations. Moreover, it explicitly showed that informal negotiations played a fostering role for achieving such a consensus, so that it would be even impossible to achieve it without debates, discussions and consultations.

However, despite intensive negotiations taken place to achieve a consensus in multilateral conferences, there are procedural devices or *modus operandi* that foster consensus and make it stronger. One of them, “silence procedure,” is a procedural device of multilateral conferences “under which any member government objecting to the request must send him a formal letter stating its opposition” [4, p. 1]. Being one of specific characteristics of the NATO decision-making procedure, “silence procedure” can be applied for all those decisions that require consensus. To understand how decisions by consensus in NATO are achieved, what are peculiarities of “silence procedure” we will start from the brief organizational structure and analyse its 2003 decision making crisis related to NATO’s defence system provision to Turkey in the lights of possible US attacks on Iraq.

Important decision in NATO made by North Atlantic Council (NAC) or Military Committee (MC) with its Defence and Planning Committee as a subdivision. There are 19 members in NAC and 18 members in MC as France withdrew from the alliance military committee in 1966, but have an observer without a voting right. According to the CRS Report for Congress, the both NAC and MC “achieve consensus through a process in which no government states its objection” [4, p. 3]. “Silence procedure” is used to circumvent confrontations during large discussions and escape unnecessary media coverage over sensitive issues.

Secretary General set a deadline to receive a letter from member states opposing an issue. Gallis states that “by not sending a letter ... within specified time period, a government can avoid the step of stating its explicit objection to a policy if it believes other allies are set on a course of action” [4, p. 3]. In the case of defence system provision for Turkey in 2003, three countries including France, Germany and Belgium objected the decision in NAC and sent a formal letter as was required. Nevertheless, the discussion of this issue by US initiative was passed to the MC, where France is not a member. Here, Germany changed its position and dropped opposition leaving Belgium in isolation and with no choice but to act in the same way [4]. In other words, the discussions to achieve consensus include intensive negotiations among all parties involved. “Silence procedure” is one of the modes that foster consensus decision making to achieve unanimity. This case explicitly shows that consensus decision making is negotiation by another name.

Although the method of decision-making in IMF and Worldbank is weighted voting, the decision over the selection of executive director in IMF and president in the World bank is achieved by consensus which usually fostered by “straw polls.”<sup>1</sup> The executive board apply this mode to measure a relative support of candidates and achieve a consensus. In 1987, after resignation of the managing director, IMF executive board announced a competition to fulfil the position. Two candidates, Michel Camdessus and Onno Ruding were shortlisted among several others. Almost all European countries including Germany and Britain were supporting Ruding, while France and most developing countries were supporting Camdessus as a candidate for the position of Executive Director. After months of extensive negotiations no consensus among member countries was achieved. Nevertheless, the executive board decided to use “straw polls” for find out a relative support. According to conducted polls, Camdessus gained 7% more support than Ruding, and based on this results he withdrew his candidacy, thus confirming Camdessus’ candidacy by consensus [5]. Evidently, because of negotiations taken place during the selection process within board of directors together with the modus operandi or fostering mechanism, “straw polls,” the consensus for this crucial decision was achieved. Thus, undoubtedly that negotiations go hand in hand with the consensus decision making so that one cannot exist without another.

One of the crucial modes for efficient consensus is a power of chairman. It is extremely responsible position, which includes variety of tasks. Buzan claims that

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<sup>1</sup> “Straw polls are launched by the head of the executive board and conducted with the assistance of the secretary to the board. The results are destroyed and never published” [2, p. 28].



chairman ... must be a person of many parts ... have knowledge of the subject to enable him to devise workable compromises ... have personal prestige to command the respect of contending senior delegates ... have a reputation for impartiality and fair dealing, preferably combined with a moderate or middle-ground national position on the issue at hand ... have sufficient support from his delegation and government to allow performance of a major task not directly tied to furtherance of national policy ... have a large capacity to work, together with the necessary diplomatic skill to handle delicate matters of timing, initiative, status, and personal relations ... has to accomplish the tricky act of balancing the exercise of enough influence to move things along on the one hand, against the danger of arousing sufficient opposition to destroy his authority on the other [2, p. 340].

However, Kaufmann clearly underlines the importance of Chairman's power stating that during multilateral conferences he/she authorizes time for unofficial negotiations, encourage them with/ without participation. Chairman can play a mediator role as well during debates over conflicting views and thus "assisting a conference towards a conciliatory solution of some problems" [7].

In conclusion, the examples of GATT Uruguay Round, Third United Nations Conference on the Law of the Sea and CSCE Madrid Conference show the importance of consensus decision-making and underline the prerequisite of negotiation to achieve the consensus. During these conferences compromises, concessions and risks were inevitable features for achieving necessary result. On the other hand the need to negotiate to achieve a consensus in multilateral conferences enable small and developing states to participate in discussions and even veto any proposal. In other words, consensus provides an equal representation of sovereign and unable major powers and developed states to act in favour of them without taking into account the objections of others. Moreover, the modus operandi of consensus decision as "silence procedure," "straw votes," as well as the power of Chairman, shape the process and make it more flexible against procedural crisis we have discussed in the essay. Furthermore, informal meetings and discussions as those organized by Evensen Group during UNCLOS Conference and those during Madrid Conference clearly illustrate the argument that consensus in multilateral conferences can be reached only through negotiations.

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